

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Thursday, 16th February, 2017, 10.00 am

Councillors: Les Kew (Chair), Deirdre Horstmann and Caroline Roberts

Officers in attendance: Alan Bartlett (Public Protection Team Leader), Terrill Wolyn (Senior Public Protection Officer) and Shaine Lewis (Principal Solicitor)

87 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer advised the meeting of the procedure.

88 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

89 DECLARATIONS OF INTEREST

There were none.

90 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

91 MINUTES OF THE MEETING OF THE 19TH JANUARY 2017

These were approved as a correct record and signed by the Chair.

92 LICENSING PROCEDURE

The Chair explained the procedure to be followed for the licensing hearing.

93 EXCLUSION OF THE PUBLIC

RESOLVED to note that this item had been included on the agenda by error and that the whole meeting should take place in open session.

94 APPLICATION TO VARY THE PREMISES LICENCE FOR CASTLE FARM BARN, MIDFORD, BATH BA2 7BU

Applicant: Castle Farm Organics Ltd, represented by Mark Edwards (Premises Licence Holder) and Robert Eldon (Designated Premises Supervisor)

Other persons: Cllr Cherry Beath, Cllr Neil Butters, Cllr Bob Goodman, Ruth Turner, Tina Trimbell, Professor Susannah Mayhew, Chris Winpenny (Chair of South Stoke Parish Council), Val Lyon, Michael Earp, Michael Hammer, Des Wighton (Monkton Combe Parish Council), Ann Stewart, John Lister, Fred Sanders, Jennifer Torrance and John Webster

The Chair explained the procedure to be followed at the hearing and the parties confirmed that they understood the procedure.

The Senior Public Protection Officer summarised the application. She explained that the applicant was seeking to vary the premises licence as detailed in paragraph 5.3 of the report. The application included the offer of two additional conditions:

No Live Music, Recorded Music, Performance of Dance or Anything Similar shall take place in the outside area beyond 23:00 on any day;

Except for access and egress, all doors and windows shall remain closed when Live or Recorded Music is provided after 23:00 hours.

156 representations of objection had been received from Other Persons, relating mostly to the licensing objective of the prevention of public nuisance. 4 representations of support had been received from Other Persons within the statutory deadline, which stated that the premises were friendly, safe and compliant. Hard copies of additional information which had been submitted by two Other Persons and by Mr Edwards, which had been circulated in advance of the meeting, were available. No representations had been received from the Responsible Authorities.

Mr Edwards stated the case for the applicant. He thought that the amount of negative comment that the application had attracted was due to two factors. The first was the compendious nature of the application, which might suggest that there was an intention to have late-night music all week or to stage pop festivals. The other was continuous friction between Castle Farm and the parish council over the past twenty years while the business was being developed. There had always been strong objections from the parish council to every planning application submitted by the farm, including the application that had allowed the café to be opened last summer.

The premises was in fact a small organic, vegetarian café situated in the front part of the farm, which could accommodate about thirty people and had a small courtyard outside. The café proved very popular, so a decision was made to apply for an alcohol licence with fairly limited hours (11:00 to 17:00) to allow visitors to have a glass of beer, wine or farm-made cider. He now wanted to extend the licence to allow for supper clubs and other small evening events. Such events had been authorised since last summer by the use of Temporary Event Notices. He believed that there had been no noise nuisance or other problems caused by these events. He noted that Environmental Health had made no objections to this application.

The café is located in a sealed building constructed from twelve inch-thick concrete, well insulated and without windows. The music amplification used in the barn is an ordinary domestic amplifier. He lives two metres from the barn and cannot hear music from the barn over the ambient noise coming from his television. The premises is 100 metres from the highway and 250-300 metres from the nearest residence. He therefore believed that suggestions that noise from the premises would spread up and down the valley was absurd, given the kind of activities that took place there. He had originally intended to apply for a terminal hour of 23:00 for the Sale of Alcohol on Sundays to Thursdays, but had extended this to 23:30 on the advice of a Licensing Officer, who had pointed out that there was no longer any

drinking-up time. Similarly the terminal hour sought for Fridays and Saturdays was 00:00, to allow for the circumstances of a full house. His intention was to end events at 23:00. He wanted the start time for the Sale of Alcohol to be 09:00, because that was when the farm shop opened, from which farm-produced cider was sold.

He had not added any additional activities to his original licence application, because he planned to apply for a variation if his planning application for extended opening hours was granted. The list of activities applied for might seem very extensive, but he was attempting to achieve flexibility in the holding of events. Closing his statement he said the café could hold 30 seated people and could never serve as a venue for a pop festival. There were licensed premises in the area which had licences that allowed regulated entertainment until quite late in the evening, but Castle Farm had no residential premises nearby. He thought that nuisance from activities at the premises was unlikely because of its location and because it was well insulated.

Mr Eldon said that he had worked in hospitality for 17 years. He had part-owned and managed Acorn Vegetarian Restaurant in Bath for 4 years. He had also managed several farm cafés. He had been a personal licence holder for about 10 years. There had been no problems relating to the licensing objectives at any of the premises at which he had worked. Events held at Castle Farm included a supper club, a Christmas Eve family lunch, a sauerkraut making workshop, a climate change charity documentary screening, a Burns' Night celebration, a food and medicine nutrition workshop, and a fermented drinks workshop. Events planned include an Acorn Kitchen vegetarian cooking chef demonstration, a Yacht Adventure Talk by a lady who had sailed around the world, a wreath making workshop, a movie night, a tofu making workshop, a child wellbeing talk, a nut cheese workshop and a climate change talk.

Members put questions to the applicant.

Q. Does live music take place in the courtyard?

A. It has so far taken place in the barn. We would like to have the flexibility to offer guitar music, for example, outside on a summer evening. We have offered a condition with the application that no live or recorded music or performance of dance or anything similar shall take place in the outside area beyond 23:00 on any day. We have no intention of having rock groups, and the size of the premises would not allow us to do so. If we wanted to put on a larger event, we would have to apply for a Temporary Event Notice to allow us to go beyond the restricted licensed area.

Q. What are indoor sports?

A. We haven't got anything specific planned at the moment. As a fundraising event we once showed an old horse race and people betted on it. They would only be indoor activities. We included this part of the application on the advice of the Licensing Officer, to ensure that we would be covered if someone suggested that we put on some form of indoor competition, or table tennis, or something like that.

Q. What are outdoor sports?

A. Very much the same as indoor sports. In France there are restaurants which have a table tennis table outside to keep the children occupied.

Q. How many parking spaces are there?

A. A maximum of about 20. The number of parking spaces sets a limit on the number of customers that can be catered for.

Q. Have you received any complaints relating to an event?

A. No. I don't think any of the residents even noticed that an event was taking place. We hear noise from neighbours' children playing music.

Q. Have you ever been contacted by Environmental Health or the Police about an event?

A. No, not at all.

The Principal Solicitor asked for clarification about amplified music outside the premises. Mr Edwards replied that there was no intention of having amplified music outside, but he wanted to provide for the situation that might arise in the height of summer when because of the heat it might be more appropriate to have music just outside the barn rather than inside. However, noise would not be allowed to rise to a level that would carry to neighbouring premises. The Principal Solicitor asked Mr Edwards how he would respond if the Sub-Committee was minded to prohibit amplified music outside. He replied that he could live with that; if there were circumstances where he wanted amplified music outside, he could apply for a Temporary Event Notice.

Other Persons put questions to the applicant.

Q. If you close the doors and there are no windows how do you control the atmosphere in the heat of summer? Do you have any air conditioning in the barn?

A. Yes, we have a portable air conditioning unit, but we haven't yet had to use it. The barn is very large and the licensed area only occupies a small part of it. The ceiling is very high and there is good air circulation inside.

Q. Do you have roof lights?

A. Yes, there are 4 lights, so 3-4% of the surface area of the roof is not insulated.

Q. Are you aware that noise travels in the valley?

A. Yes, I've owned the farm for 22 years and have lived there for 4 years. I am aware that sometimes, depending on which way the wind is blowing, you can suddenly hear music. I do not believe that the level of noise we make within the barn will carry.

Q. You may not have received complaints, but there are references in the representations, for example on agenda page 145, to noise from late-night amplified music emanating from the farm and continuing to 6 am.

A. We have never done anything beyond 23:00. We have never had highly-amplified noise at 6am. There are also references in the representations to fireworks, but we have never had fireworks at the farm. A neighbour a couple of fields away did have a loud party with loud music and fireworks. I assume that because Castle Farm is something of a local target, it has been attributed to us.

Q. You had a late-night event several years ago that caused disturbance.

A. Three and a half years ago my daughter got married. We had a marquee in the field and a disco until 23:00. This event was attended by the Chairman of South Stoke Parish Council, and he was the last person to leave at 23:30. That is nothing to do with this application.

Q. It did go on after 23:00.

A. I am sorry, but it did not. I think the Environmental Health Officer would have noted that in his response to this application.

Q. If you were granted this licence, you could do anything you wanted.

A. If we wanted to make loud noise before 23:00, we could do so now. There are a number of neighbours who regularly have parties which are louder than any noise we make. Are you sure that the noise emanated from us rather than someone else? I can only suggest that you report incidents to Environmental Health so that they can investigate.

Q. People have contacted you to ask for noise to be turned down.

A. I am sorry, but I deny that. Do you mean since July? We only had electricity installed last July. We used a generator for my daughter's wedding.

Q. It was a Bank Holiday. I am not sure if it was since last July.

A. We couldn't have had amplified music before last July because we had no electricity.

The Senior Public Protection Officer clarified that the conditions offered by the applicant about music after 23:00 would apply to amplified and unamplified music. The applicant confirmed that he understood this.

The Other Persons stated their cases.

Chris Winpenny, Chair of South Stoke Parish Council, said that it was not he who had attended Mr Edward's daughter's wedding celebration; it must have been his predecessor. He said that the Parish Council represented the views of many people in the parish and in the area around the farm. The farm was situated in the Cotswold Area of Outstanding Natural Beauty and a quiet rural area. The local geography allows sound to travel down the valley uninterrupted for a considerable distance; the potential for public nuisance is therefore very real. The possibility of public nuisance was acknowledged in the variation to the planning consent, which was granted as recently as November 2016. The variation sets the opening hours of the café to 09:00 to 18:00, with a closing hour of 23:00 on two evenings a week. The reasons given for this were to safeguard the amenity of the occupiers of adjacent properties and to accord with the Bath Local Plan. The use of the café is also restricted to purposes ancillary to the existing farm operation. Mr Winpenny submitted that this was difficult to reconcile with the applicant's desire to show films and provide music, dance and sporting events. It was the applicant himself who stated his reasons for seeking these opening hours as being the amenity of adjacent properties and to avoid conflicting with local pubs. The hours now sought for this application are in breach of this planning consent. It is understood that Planning Enforcement has written to the applicant informing him of this. He submitted that the hours the applicant was now seeking should be subject to the public scrutiny of another planning application. It was the Parish Council's submission that the licence should be consistent with the planning consent and that the hours for the sale of alcohol should therefore be restricted to 11:00-17:00 with opening hours of 09:00-18:00 as at present, and that the applicant should continue to use Temporary Event Notices for up to two days a week for special pre-booked events. In such a sensitive location all events should take place indoors with doors and windows closed after 18:00. This would assure local residents that Castle Farm was not going to become a major events venue, while allowing the applicant to do all that he wished with the small inconvenience of having to apply for Temporary Event Notices.

Cllr Butters said that noise pollution, especially across the valley, was the one of the most difficult issues he had to deal with as a councillor. Monkton Combe and South Stoke had been particularly affected. Reference had been made to the reopening of the Packhorse and concerns about events being held there, but the local community of South Stoke would have full control over them. He concluded by saying the Sub-Committee had seen the wide spread concern in the community about this application, and asked them to think very carefully about it before granting it.

Professor Mayhew noted that more than 156 people had made representations opposing this application. The variation would allow the applicant freedom to host many more events with sound amplification, and residents were concerned about the impact on their quality of life in this largely unspoiled area with its protected wildlife. Residents were aware how far noise travels along the valley. Low-frequency bass noise was particularly intrusive; vibrations from external sources could be heard and felt in homes throughout the year. The opening of doors at the premises would allow noise to escape. The applicant was seeking a dramatic increase in hours, in fact a 240% increase. Paragraph 123 of the National Planning Policy Framework states that decision makers should “identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.” Several residents had contacted Environmental Services about noise only to be informed that there was no call-out after hours. Requests to the applicant to turn the music down at past events had met with no response. He appeared to have little understanding of the community spirit in the area. She urged the Sub-Committee to protect residents’ quality of life and reject the application.

Cllr Beath said that she supported independent businesses, but activities at Castle Farm had grown very rapidly. Residents were very concerned about further expansion. She urged the Sub-Committee not to grant the variation in this noise-sensitive area. If it was granted there should be control of noise and music should not be allowed outside the premises.

Cllr Goodman said that since his election he had been amazed to see the real community spirit in Combe Down. He had received 150 emails objecting to this application from residents fearful of the consequences. The premises were situated in peaceful countryside. On a number of occasions music from events at Castle Farm had been heard across the valley. He himself had heard it. He did not accept that the premises were adequately soundproofed; it was an industrial building with thin roof insulation and large roof lights. The fact was that there was no soundproofing at all. The applicant had referred to a portable air-conditioning unit; for a building this size it would need to be the size of a large car. Residents had not complained enough about past noise nuisance, but this application had galvanized them. He supported the farm shop, but the intensification of activity at the premises would have a severe impact on the community. An elderly resident told him that she did not wish to move at her time of life and asked him to do everything he could so that she could live in peace in her own home for as long as possible.

The applicant did not wish to put any questions to the Other Persons.

Members put questions to the Other Persons.

Q. Have the Councillors received complaints about the premises prior to this application?

A. No, but people have talked about noise nuisance from the premises. Some residents had been affected, but had said that they did not wish to complain. Mrs Mayhew said that she had made a complaint to the police in 2015, but they had responded that it was not within their remit. She was aware that several residents had attempted to make complaints to Environmental Services, but they had discovered there was no call-out to noise complaints after hours. Mrs Turner said that the events so far held at the premises had been held during the winter months and had been fairly low-key. She was concerned about events taking place in the summer, when there would be customers outside. She had made a complaint when the wedding reception had taken place at the premises, and this had been well past 23:00. She pointed out that the website for Castle Farm mentioned 30 parking spaces, not 20. Mrs Timbrell stated that although loud noise had reverberated across to where they live, they had been “tolerant”.

The parties summed up.

Cllr Beath said that the Sub-Committee had heard how concerned residents were about the potential impact of this variation on their homes and community. Because of the rapid growth of this site and the wide-ranging nature of the application, residents were seeking reassurance. Whilst accepting that the evidence from the temporary event notices was that the premises could operate without causing a nuisance, the Sub-Committee were urged to respect their concerns.

Mr Edwards said that he was confident that nothing that had taken place at the premises or would take place in the future had or would cause any nuisance, with the exception of his daughter’s wedding three and a half years ago. He wanted to be able to host small-scale events. There would be no music outside after 23:00. He had operated for seven months without causing nuisance. He needed to extend the range of activities at the premises to meet the demand from the community and to maintain the viability of the business. He therefore asked the Sub-Committee to grant the variation, subject to the condition on outside music. He had been out of the country until the beginning of this month and had found on his return that the Parish Council had written to everybody about the application, provoking anxiety among residents, which was why there had been so many representations of objection. As soon as he became aware of this he had secured representations of support for the application, most of which had been rejected as being out of time. Over a thousand customers a week came to the café, mainly local people. He felt that the Parish Council had raised fears about what might happen, rather than what had actually happened.

Following an adjournment, the Sub-Committee **RESOLVED** to grant the variation for the reasons and subject to the conditions detailed below.

Reasons and conditions

Members have today determined an application to vary a premises licence at Castle Farm Barn, Midford. In doing so they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council’s Policy and the Human Rights Act 1998.

Members are aware that the proper approach under the Licensing Act is to be reluctant to regulate in the absence of evidence and must only do what is appropriate and proportionate in the promotion of the licensing objectives based on the information put before them. Members noted that the application should be considered on its own merits.

The applicant stated the property was purchased in 1995. Since then it has operated as a farm. More recently, an organic food cafe has operated on site with the benefit of a Licence to serve alcohol between 11am and 5pm. This has proved popular with customers and as a result Temporary Event Notices have been used to extend the cafe's offering into the evening. It was further stated that the premises are small, caters for up to 30 covers and benefits from a small outside courtyard area with seating.

The applicant confirmed that such events have been operating for a number of months since the café was licensed and no complaints had been received from local residents, the police or environmental health officers. Therefore, in consultation with the police, it was decided that a licence variation would be applied for.

The applicant said the cafe is not a drinking den and that alcohol is incidental and complimentary to the food offered by the café and that it would remain that way. With regard to events the applicant said that these will be planned to finish by 11pm and the additional hours were applied for on advice from the police who suggested the additional time would allow for drinking up and dispersal of customers. In any event whilst the application was for 7 days a week they were restricted to two evening events per week by their planning consent and the licence would therefore give them the flexibility to operate on any 2 of 7 nights without the need for Temporary Event Notices.

With regard to noise and light nuisance the applicant stated the cafe has 30cm concrete walls and a steel clad roof insulated with 50mm of foam material. Further, there are no windows, the doors are insulated and with the conditions offered there will be no noise or light leakage beyond the property boundary. With noise this would be more limited because the premises uses a domestic type amplification system. In conclusion the applicant said they had held evening events in the barn for some months and had not been investigated by the police or environmental health. Accordingly with a proven good premises management track record there was no reason why the application should not be granted to enable the cafe to continue to thrive and provide local services and employment.

The interested parties submitted that the variation would have a detrimental effect in a number of ways. In particular, that it would cause public nuisance in terms of light and noise pollution. With regard to public nuisance it was stated that given the nature of the building and topography of the area noise pollution would escape and travel throughout the valley causing nuisance. The interested parties recalled a wedding event held on the premises a number of years ago which caused wide scale nuisance and annoyance to local residents.

The interested parties also suggested that the applicant had failed to address a number of licensing objectives. For example the prevention of crime and disorder in that large numbers of customers from Bath and the surrounding area could be

attracted to the venue and would not be controlled on the premises. It was further suggested that that public safety objective would be undermined because of the premises' remote location on the busy and dangerous B3110. Moreover, and with its close proximity to family homes and local schools, the protection of children from harm objective would also be detrimentally effected.

Members were careful to take account of the relevant written and oral representations and were careful to balance their competing interests. Members were however careful to disregard irrelevant matters. These included traffic, parking and highways; the need for such a premises; the health and safety of persons not on the premises and planning issues including conditions, the AONB and Green Belt. Members further disregarded matters relating to Cumulative Impact as the premises are not inside the Cumulative Impact Area.

With regard to the application, Members were satisfied that the prescribed Licensing process had been followed. It was also noted that with regard to entertainment the premises would in part benefit from deregulation until 11pm. Members also noted that a number of events had been run under Temporary Event Notices without complaint, save for a wedding event a number of years ago, and there were no representations from Responsible Authorities.

Members found Castle Farm Barn to be a small well run premises and the application reasonable and proportionate. In the circumstances with little objection to extending the sale of alcohol and with the premises operating TENs without complaint Members were satisfied that all remaining Licensable activities applied for could be controlled by conditions consistent with the operating schedule and the following additional condition:

- There shall be no amplified music played in the outside area of the premises.

Members therefore grant the variation considering the premises are unlikely to have a detrimental effect on the licensing objectives.

Authority is delegated to the licensing officer to issue the licence.

The meeting ended at 12.12 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services